

Conceptual And Theoretical Frameworks of Secondary Victimization

Drashti S. Pandya
UWSL, Karnavati University

1.1. UNDERSTANDING VICTIMOLOGY: WHAT IS IT?

For the majority of recorded history, issues regarding the criminal—who commits crimes, why, and how society should deal with them—have dominated academic research on crime. Despite being at the centre of every criminal incident, the victim was mostly employed as a passive backdrop for the drama between the accused and the state. In order to address this imbalance, victimology arose as a separate academic field.¹ It is the scientific study of crime victims, including their traits, their contacts with the criminal justice system, their relationships with criminals, and the psychological, physical, financial, and social repercussions they face.² The discipline is both descriptive, explanatory and prescriptive: that is, it explains the characteristics of victims, attempts to explain the mechanisms that lead to victimization, and specifies how the needs of victims should be addressed by institutions, laws and policies.

1.1.1. Historical Development on Victimology as a Discipline

Although sporadic attention to the victim's involvement in crime can be found in far earlier legal and philosophical texts, victimology's intellectual roots are generally attributed to the mid-20th century. The Code of Hammurabi, dating back to approximately 1754 BCE, contained regulations

concerning the compensation of the victims of crime, showing a primitive knowledge that the misery of the victim demanded a social response.³ In a similar vein, in Roman law there were acts in fact responsible for permitting victims to seek compensation. However, the independent function of the victim was gradually overshadowed by the gradual establishment of the modern State and its monopoly in the criminal prosecution. The victim was moved into the role of witness whose task was to provide evidence for the prosecution rather than the protection of individual rights and the criminal laws became the instruments of public order rather than of private justice.

The decade immediately following World War II is generally regarded as the official beginning of victimology as a scholarly discipline. Scholarly attention to the rights and experiences of victims of crime and state violence was influenced by the Holocaust, the Nuremberg Trials and the more general moral encounter with the issue of mass atrocity.⁴ In this context, Romanian-Israeli criminal lawyer Benjamin Mendelsohn produced groundbreaking work in 1947 that proposed a new field of study he called victimology, which focused on the victim's personality and role in the criminal incident.⁵ Around the same time, the German criminologist Hans von Hentig released his seminal study examining the relationship between victim and offender, arguing that victims were active players who were responsible for,

¹ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (9th edn, Cengage Learning 2015) 3.

² Jo-Anne Wemmers, *Victims in the Criminal Justice System* (Kluwer Law International 1996) 12.

³ Martha T Roth (ed), *Law Collections from Mesopotamia and Asia Minor* (2nd edn, Scholars Press 1997) 101.

⁴ Mark A Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007) 45.

⁵ Benjamin Mendelsohn, 'A New Branch of Bio-Psycho-Social Science: Victimology' (1956) 10 *Revue Internationale de Criminologie et de Police Technique* 95.

at least in some cases, the situation of their own victimization, that they were not passive objects.⁶ These early frameworks were important because they included the victim in the analytical framework for the first time, even though they were later criticized for having victim-blaming tendencies.

Victimological studies expanded quickly in the 1960s and 1970s due to a number of convergent factors. Beginning with the President's Commission on Law Enforcement and Administration of Justice in the United States in 1967⁷, the development of empirical criminology and extensive victimization surveys exposed a sizable "darkfigure" of unreported crime and showed that official crime statistics significantly underrepresented actual victimization.⁸ Concurrently, the women's liberation movement began to produce effective criticisms of the law's treatment of victims of domestic abuse and rape and began to attribute their experiences to patriarchal systems, blaming the problems on societal systems rather than the individual's personal faults.⁹ Early victimological frameworks that put the blame on victims were challenged by feminist academics and activists who argued that the victim's experience, particularly a female victim of sexual violence be understood as a function of gendered power relations. The discipline was radically altered by this criticism.

An important turning point in the globalization of victimology institutionalization was the declaration of the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985.¹⁰ For the first time ever, an international agreement contained a comprehensive definition of "victims", a list of their rights to participation, information, compensation, restitution and help, and called on states to work to adapt their legal systems. Since then, victimology has evolved into a multidisciplinary field which draws from criminology, psychology,

sociology, law, public health and gender studies. University departments, international associations, and specialized journals are all invested in extending the knowledge of victimhood and making an educational reform.

1.1.2. Shift from Offender - Centric to Victim- centric Criminology

The main goal of classical criminology, which was founded by Beccaria and Bentham, was to create a logical system of penalties that would discourage future criminals.¹¹ Lombroso, Ferri, and Garofolo's positivist criminology looked inward to the psychological and biological components of the criminal personality.¹² The offender was the primary focus of research and intervention in both traditions. In these frameworks, the victim simply played a supporting role as the person who was harmed and whose situation warranted the use of the criminal justice system.

This analytical approach was radically changed by the victim-centric movement in criminology. Victim-centered studies asked the question, "Who is injured by crime?" rather than just "Who commits crime and why?" And what kind of harm it is, how much? How is the legal system about the victims? Most importantly, does the reaction of the system cause more damage? There were normative and factual aspects to this change. From an empirical point of view, it meant that victimization surveys, psychological impact of victimization studies and studies of institutional victim behavior had to be considered. Normatively, it held that victims had rights, not merely interests, which the system had to protect. The victim is now a subject of entitlements rather than an object of sympathy.

⁶ Hans von Hentig, *The Criminal and His Victim* (Yale University Press 1948) 383.

⁷ President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (US Government Printing Office 1967).

⁸ Albert J Reiss Jr, 'The Measurement of the Dark Figure of Crime' (1967) 374 *Annals of the American Academy of Political and Social Science* 1.

⁹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Simon & Schuster 1975) 15.

¹⁰ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (29 November 1985) UN Doc A/RES/40/34.

¹¹ Cesare Beccaria, *On Crimes and Punishments* (first published 1764, Hackett Publishing 1986) 11.

¹² Cesare Lombroso, *Criminal Man* (Duke University Press 2006) 45.

1.1.3. Mendelson, Von Hentig, and Foundational Theories

Benjamin Mendelsohn made two contributions to the field of victimology. He emphasized on the field's scientific independence from criminology and first suggested a name for it. Second, he created a typology of victims according to the extent of their involvement in the crime, with the "most guilty victim"—who is more responsible than the perpetrator—at one end of the spectrum and the "completely innocent victim" at the other. Mendelsohn intended this typology to be an impartial analytical tool for comprehending the victim-offender interaction, but it was later stolen to support victim-blaming. His insistence that the existence of victimhood must be scientifically researched, instead of simply assumed, is his more lasting contribution.¹³

A dynamic, interactionist model of the victim-offender relationship was put out by Hans von Hentig's work, especially his 1948 monograph, which argued that victimization is rarely the result of a random contact between a random victim and a random offender.¹⁴ Based on psychological, social, and biological traits that, in his opinion, made people more vulnerable to victimization, he classified thirteen victim types. His typology brought to the fore the important empirical subject of unequal victimisation risk, despite criticism of victimizing the victim and making sexist and racist assumptions about vulnerable populations.

These theories were greatly improved and reoriented by later foundational theorists. According to Marvin Wolfgang's theory of "victim precipitation," which was based on his research on homicides in Philadelphia, the victim started or intensified the violent altercation in a significant percentage of cases.¹⁵ This thought was later developed by Menachem Amir to encompass rape, a development which elicited severe feminist criticism.¹⁶ Feminists like Carol Smart, Susan Brownmiller and Catherine MacKinnon complained that victim-precipitation

theory is supporting the ideology of patriarchy and diverts blame from the rapist to the victim.¹⁷ Because victimology was forced to examine its presumptions on agency, power, and gender, this argument was intellectually fruitful and ultimately resulted in the development of a far more critical and nuanced field.

Ezzat Fattah, one of the most active victimologists of the latter part of the 20th century, presented an integrated theory that explained how the factors of everyday activities, lifestyle, and situational factors combine to produce different levels of risk. According to Cohen and Felson's Routine Activities Theory, victimization happens when a motivated criminal comes across a suitable prey without capable guardianship. When it came to comprehending victimization patterns in various social contexts and demographic groups, this paradigm proved to be quite productive.¹⁸ His framework helps explain some of the reasons why women in India who work in unorganised industries, travel alone at night or belong to marginalized castes experience disproportionately high rates of sexual and violent victimisation.

1.2. PRIMARY, SECONDARY, AND TERTIARY VICTIMIZATION: CONCEPTUAL DIFFERENTIATION

Victimisation as a process is multi-layered and experienced over time, geography and across institutions as opposed to a singular event.¹⁹ Three conceptually diverse types of victimization are distinguished by contemporary victimology; each is caused by a different source and necessitates a different institutional response. The argument of this dissertation is based on an understanding of these differences.

1.2.1. Primary Victimization: The Original Criminal Act

The direct injury brought on by the illegal act itself is referred to as primary victimization. The assault victim's physical harm, the rape survivor's sexual

¹³ Mendelsohn (n 24).

¹⁴ von Hentig (n 25).

¹⁵ Marvin E Wolfgang, *Patterns in Criminal Homicide* (University of Pennsylvania Press 1958) 245.

¹⁶ Menachem Amir, *Patterns in Forcible Rape* (University of Chicago Press 1971) 56.

¹⁷ Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 34.

¹⁸ Lawrence E Cohen and Marcus Felson, 'Social Change and Crime Rate Trends' (1979) 44 *American Sociological Review* 588.

¹⁹ Sandra Walklate, *Imagining the Victim of Crime* (Open University Press 2007) 25.

violation, the robbery victim's anxiety, and the family member's sadness are all examples of this. The primary victimization is the triggering incident; it is what the criminal justice system is supposed to address and correct, and it is what the law designates as the crime. Primary victimization can have negative effects on one's body, mind, finances, or relationships. All four dimensions of injury are frequently present at the same time and reinforce one another, especially in cases involving sexual and major violent crimes.

Psychological literature identifies a unique response path after primary victimisation. Acute stress reactions, such as shock, disorientation, emotional numbness, hypervigilance, and physical symptoms, are usually experienced by victims immediately after the criminal occurrence.²⁰ If left untreated, these reactions may evolve into chronic psychiatric conditions that include major depressive disorder, anxiety disorders, substance use disorders and post-traumatic stress disorder.²¹ The nature and severity of the offense, the victim's past trauma history, the availability of social support, and—most importantly, as the following sections will show—the caliber of the institutional response the victim receives all play a role in mediating the severity and duration of these psychological consequences. Secondary victimisation is introduced into the analytical scheme at this stage.

1.2.2. Secondary Victimization from the Lens of Institutional and Societal Responses

The additional pain that victims experience as a result of formal institutions' and informal social networks' reactions to the initial criminal act is known as secondary victimization. In the 1970s, academics examining how police, medical professionals, and courts handled rape victims introduced the idea into victimological literature. It depicts a strange and extremely unsettling reality: the very institutions set up to protect victims and administer justice may damage the very individuals they are supposed to

protect due to their structural design, procedural requirements, and attitudinal prejudices.²²

There are several ways that secondary victimization takes place. At the behavioural level, it includes insensitive questioning, disbelieving expressions, victim-blaming attitudes, and a failure to teach people about their rights and accessible resources. At the procedural level, there is the possibility that victims will be asked to repeat their stories, be subjected to intrusive examinations and harsh cross-examination, wait for lengthy delays and have to deal with intricate bureaucracy without much assistance. These procedures are capable of causing psychological damage as much or more than the initial crime, and more so when carried out by respected institutions that are supposed to protect the victims of the crime.

Nils Christie's idea of the "ideal victim" is crucial to the understanding of secondary victimisation. Christie contended that only those who fit a stereotype—the innocent, defenceless, unfamiliar victim who was involved in a respectable activity at the time of the offense—are granted complete victim status by institutions and society.²³ Victims who do not fit this ideal are denied full legitimacy and the protection which legitimate victims enjoy. They may be known to the perpetrator, be involved in activities that are considered disreputable by the perpetrator or have pre-crime behaviour that is judged to be morally dubious. In India, the perfect victim is constructed around patriarchal norms; a rape victim who reports soon, has dressed modestly, has never had sex and never been in a relationship with the accused person is considered credible; everybody else is subject to social condemnation and institutional skepticism.

1.2.3. Tertiary Victimization: Stigma at the Community Level

The harm caused by larger community and cultural reactions to the victim's status is referred to as tertiary victimization. As opposed to secondary victimisation, tertiary victimisation is caused by neighbors,

²⁰ Judith Herman, *Trauma and Recovery* (Basic Books 1992) 33.

²¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* (APA 2013).

²² Rebecca Campbell, 'Rape Survivors' Experiences with Legal Systems' (2005) 12 *Violence Against Women* 287.

²³ Nils Christie, 'The Ideal Victim' in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy* (Macmillan 1986) 18.

community members, religious groups and the social environment in general, whereas the latter is primarily caused by formal institutions. Stigmatization, social marginalization, gossip, loss of social and economic possibilities, and internalization of guilt and self-blame are some of its manifestations. In India, tertiary victimisation can be particularly severe because caste structures control social relationships and communal honor is so closely related to female sexual purity. Sexual violence victims are sometimes stigmatized by their communities, forced to marry their attackers as a "settlement," denied work and marriage opportunities, and in severe situations, forced to move completely. Under-reporting means that the criminals are able to escape punishment, perpetuating the circumstances of the victimisation. The fear of tertiary victimisation leads to a vicious-circle which discourages reporting.

1.3. THEORETICAL FRAMEWORKS EXPLAINING THE SECONDARY VICTIMIZATION

A thorough examination of secondary victimization needs to be based on theoretical frameworks that describe how and why it happens, who is most susceptible to it, and what circumstances allow or prohibit it. The analytical framework for this dissertation is provided by the following frameworks, which are derived from criminology, psychology, sociology, and feminist legal theory.

1.3.1. Rape Trauma Syndrome

In their seminal 1974 study of rape victims who arrived at Boston City Hospital, Ann Wolbert Burgess and Lynda Lytle Holmstrom initially described Rape Trauma Syndrome (RTS). Burgess and Holmstrom discovered a distinctive two-phase reaction to rape based on interviews conducted over a one-year period with ninety-two adult rape victims. Deep emotional disarray is characteristic of the acute stage, and occurs immediately following the assault and lasts for days to weeks. Victims may be either appearing controlled - composed, repressed and emotionally flat, or expressive - showing clear distress, fear, crying and agitation. Both are normal reactions of trauma, although in many cases, police and other institutions

misinterpret such a controlled presentation of the behaviour as evidence of no rape or unreliability.²⁴

The disturbance of the victim's everyday routines, dread and anxiety reactions, nightmares, phobias, and sexual dysfunction are the hallmarks of the long-term reorganization phase, which can endure for months or years. In this second phase, Burgess and Holmstrom discovered that those victims who received unfavourable institutional responses to their experiences, including disbelief, victim-blame or hostile interrogation, exhibited more severe and prolonged symptoms. The concept of secondary victimization is empirically supported by this finding, which has since been repeated and expanded upon by many researchers: institutional responses are psychological interventions with quantifiable clinical implications rather than merely procedural events.

In the Indian context, RTS has enormous legal significance. It is not uncommon to see the Indian police and courts demanding that victims fit a "genuine" profile of victims: visibly disturbed, coherent, consistent, timely and settlements resistant. Institutional actors look down upon controlled presentations, delayed reporting due to fear or family pressure or contradictions in accounts, which sometimes result from memory fragmentation, as fabrication. The Supreme Court of India has cautioned against such thinking, in particular, in the case of *State of Punjab v. Gurmit Singh*²⁵ and *Chanderbhaga* that a rape victim's testimony needs not be corroborated and courts should not give undue weight to small inconsistencies caused by trauma.

1.3.2. Just Worlds Hypothesis and Victim Blaming

According to the Just World Hypothesis, which was proposed by social psychologist Melvin Lerner in his 1980 work, humans have a basic cognitive desire to think that the world is a fair and ordered place where everyone gets what they deserve. This is a psychological view, for it enables humans to go out into the world with confidence, not paralyzed by a sense of inevitable harm. The just world idea is put in jeopardy when evidence of innocent suffering—a victim who was not at fault—is presented. People

²⁴ Ann Wolbert Burgess and Lynda L Holmstrom, 'Rape Trauma Syndrome' (1974) 131 *American Journal of Psychiatry* 981.

²⁵ *State of Punjab v Gurmit Singh* (1996) 2 SCC 384 (SC).

employ one of two cognitive techniques to reestablish the belief: either they accept the injustice and try to make it right, or when that doesn't seem possible, they denigrate the victim by pointing out how the victim caused, invited, or deserved their own suffering.²⁶

The just world mechanism generates remarkably persistent victim-blaming cognitions in the setting of sexual violence. If a woman has been raped, the just world believer will look for some aspect of her behavior, appearance, location, or past that makes her victimization seem somehow justified or at least predictable. Not only normal people are prone to this, judges, police, prosecutors, and medical staff are also prone to the same cognitive biases. Research has repeatedly shown that criminal justice professionals' just world beliefs are linked to higher thresholds for case prosecution, more victim-blaming responses during questioning and cross-examination, and more negative assessments of rape victim credibility.

In India, highly ingrained patriarchal traditions around female sexuality, domesticity, and honour intersect with the just world mechanism. The idea that "respectable" women are not raped, or that if they are, it's because they were somewhere they shouldn't have been, wearing something they shouldn't have worn, or hanging out with someone they shouldn't have associated with, is a culturally institutionalized framework rather than just an individual prejudice. The just world hypothesis is operationalized in formal legal proceedings by police officers who imply that a complainant was "asking for it," doctors who comment on a victim's sexual history in medico-legal reports, and defence attorneys who cross-examine victims regarding their attire and past relationships.

1.3.3. Re-Traumatization Theory

According to re-traumatization theory, which is based on the larger trauma literature in clinical psychology, people who have gone through traumatic experiences are more neurobiologically and psychologically vulnerable to stressful exposures in the future. Trauma causes long-lasting changes in the autonomic nervous system, the hypothalamic/pituitary/adrenal axis, and in

the areas of the brain that control memory and emotional control.²⁷ Even if there has been no new objective risk, cues associated with the original trauma (such as similar environments, interactions or emotional dynamics) may provoke a full trauma stress response.

Every institutional interaction offers potent re-traumatization stimuli for victims of sexual and violent crime traversing the criminal justice system. The victim may have the same dissociative and hyperarousal reactions at the police station where she is required to describe the assault in detail. The same sense of helplessness and powerlessness she felt at the hands of her attacker may be triggered by a trained advocate's cross-examination in court, which looks for contradictions. The physical aspects of the assault may be immediately reenacted during the forensic medical examination, which may need close physical contact by a stranger in an institutional setting. Re-traumatization theory: a theoretical explanation of why procedurally lawful institutional encounters can still be associated with measurable psychological injury.

1.3.4. Social Support Theory and Its Absence in the Indian Context

According to social support theory, the most potent mediating factor in trauma survivors' psychological rehabilitation is the quantity and calibre of social support. Social support is of three types: informational (direction, counsel, resources), instrumental (practical help with daily needs) and emotional (concern, empathy, validation). Research has been consistent that victims who experience significant social support following a crime experience less severe and shorter duration psychological after effects than those who are socially isolated or who receive negative, blaming, or minimizing responses from their social network²⁸

The social assistance that victims of violent and sexual crimes could normally anticipate from their families and communities is often denied or deliberately twisted in the Indian social framework. When a rape revelation is made, family members who place honour before the victim's well-being may deny it, put

²⁶ Melvin J Lerner, *The Belief in a Just World* (Springer 1980).

²⁷ Bessel van der Kolk, *The Body Keeps the Score* (Penguin 2014) 66.

²⁸ Sidney Cobb, 'Social Support as a Moderator of Life Stress' (1976) 38 *Psychosomatic Medicine* 300.

pressure on the victim to keep quiet, or insist that the victim wed the offender in order to repair the family's reputation. The victim may be shunned by the community as "polluted" or "fallen." Extrajudicial "settlements" that can favour community interests at the expense of the rights of victims can be enforced by religious or caste panchayats. These arrangements are often based without regard to the rights and the welfare of the victim and result in social exclusion and silencing. Instead of making up for this lack of social support, the formal institutions of the criminal justice system often reinforce and magnify the same victim-blaming and silencing processes. Victims of sexual violence in India are faced with extreme social isolation at a time when psychological survival depends most on the need for connection and recognition.

1.3.5. Feminist Legal Theory and Victimization of Gender

Perhaps the most thorough and insightful examination of the ways in which the criminal justice system creates secondary victimization may be found in feminist legal theory. Feminist legal scholars have argued that rape laws have been part of a patriarchal strategy of controlling female sexuality rather than an impartial instrument of justice. The seminal work of Catharine MacKinnon, Carol Smart and Susan Estrich in the 1980s provided the background for this critique. The marital rape exemption, the rules governing evidence of the complainant's sexual history, the corroboration requirements historically placed on rape testimony, and the complainant's procedural exposure to public cross-examination regarding her most private experiences were all found to be mechanisms by which the law created and enforced standards of acceptable female sexuality while penalizing women who deviated from those standards.²⁹

In India, the work of scholars like Pratiksha Baxi³⁰ and Flavia Agnes³¹ have contributed rigorously and deeply to the feminist critique. Baxi's ethnographic research on rape trials in Gujarat shows how the courtroom serves as a venue for the creation and perpetuation of

prevailing standards on the sexual acceptability of women. Agnes has demonstrated how the systemic patriarchy ingrained in legal systems has not been addressed by subsequent rounds of rape legislation reform. These academics have argued that in India secondary victimization is caused due to gendered institutional structures. They reject the notion that it is a simple result of prejudice or administrative inefficiency.

1.4. FORMS OF SECONDARY VICTIMIZATION: A TYPOLOGY

The phenomenon of secondary victimization is not consistent. Depending on the institutional setting in which it takes place and the mechanism by which it functions, it takes many shapes. Because different types of secondary victimization demand different kinds of remedies, a typological analysis is essential for proper assessment and successful reform.

1.4.1. Institutional Victimization at the Secondary Level

The harm caused by formal criminal justice institutions, such as police, courts, and hospitals, during their official interactions with crime victims is referred to as institutional secondary victimization. Institutional secondary victimization takes place within formal judicial processes, which appear frequently legitimate. This type of secondary victimization is especially pernicious because it carries the implicit authority of the State, victims who are already psychologically vulnerable may be least able to confront or resist it, and victims cannot easily avoid it (engagement with these institutions is usually required to pursue justice).

Examples at the police level are refusal or delay in registering First Information Reports, interrogation methods which insinuate the complicity or disbelief of the victim, discouragement of complaints, violation of privacy in the process of giving statements, and failure to inform victims of their rights. The adversarial cross-examination of complainants in public proceedings, repeated questioning during several hearings, trial

²⁹ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

³⁰ Pratiksha Baxi, *Public Secrets of Law* (Oxford University Press 2014).

³¹ Flavia Agnes, *Law and Gender Inequality* (Oxford University Press 1999).

delays that increase the victim's institutional exposure, insensitive judicial remarks, and the lack of victim-support infrastructure in the majority of Indian courts are all examples of this at the judicial stage. These interactions make the pursuit of justice another ordeal.

1.4.2. Social Secondary Victimization

The reactions of informal social actors, such as friends, family, neighbours, community leaders, and the general public, to the victim's experience and choice to report, result in social secondary victimization. The immediate social network of the victim is often the first person to be contacted after an offense, particularly in cases of sexual violence. The quality of this initial response has a large impact on subsequent psychological outcomes, as well as decision making about being involved with formal institutions.

Caste honour rules, patriarchal household structures and community solidarity against outside scrutiny are the character of social secondary victimization in India. When the victims report assault to the family members, they often get the pressure of maintaining the family's reputation: silence, dropping the accusation, accepting the bribes or worse, accepting it and marrying the perpetrator. Victims from Scheduled Castes and Scheduled Tribes have even more challenges on their shoulders as they face the solidarity of caste protecting the perpetrators in such cases and emboldening the victims.

1.4.3. Legal Secondary Victimization

Legal secondary victimization is the harm inflicted, particularly by the procedural constraints of the legal process, as opposed to the behavioural attitudes of individual players.³² Even if every judge was unbiased, every police officer was totally empathetic, and every medical examiner was highly sensitive, victims of sexual and violent crimes would still suffer greatly from several structural elements of the adversarial criminal justice system. During the formal complaints (making a statement under section 161 of the Code of Criminal Procedure, rendering it before a magistrate under section 164, giving evidence in court and cross examination), victims have to narrate their most traumatic experience publicly.

The most concentrated instance of legal secondary victimization occurs during cross-examination. Defence attorneys are allowed to cross-examine prosecution witnesses, including the complainant, during the adversarial trial. This role invariably entails questioning the most personal details of the incident when the complainant is also a victim of sexual assault. The structural dynamic of cross-examination as a confrontational challenge to the victim's account and credibility has not changed, despite reforms following the Justice Verma Committee Report that have strengthened camera proceedings and limited the use of the complainant's sexual history as evidence.

1.4.4. Medical Secondary Victimization

The majority of victims of violent and sexual crimes must undergo a forensic medical examination as part of the evidentiary process, which can result in medical secondary victimization. The examination is both an institutional interaction that carries the risk of re-creating the trauma of the initial offense and a clinical technique meant to record injuries and gather forensic evidence. The forensic examination can cause acute re-traumatization since it is generally carried out by strangers in unfamiliar professional settings, frequently under time constraint, and without sufficient privacy, consent, or emotional support.

The "two-finger test," vaginal examination to determine one's experience of sex and, therefore, credibility as a victim, is a prominent form of medical secondary victimization. This was outlawed by the Supreme Court of India in 2014, in *Lillu @ Rajesh v. State of Haryana*³³, the Supreme Court of India strongly prohibited such practice, stating that the practice had no valid evidence value and violated the victim's right to privacy and dignity under Article 21 of the Constitution. Despite this ban, surveys undertaken by legal aid organisations and field reports continue to report the practice in different parts of the nation which underlines the issue of disconnection between institutional practice and legislative reform that characterises secondary victimisation in India.

³² K Chockalingam (n 3).

³³ *Lillu v State of Haryana* (2013) 14 SCC 643 (SC).

1.5. PSYCHOLOGICAL EFFECTS OF SECONDARY VICTIMIZATION

1.5.1. PTSD, Depression, and Social Isolating

A strong empirical link between the type and degree of psychiatric problems that victims later develop and the caliber of post-crime institutional reactions has been established by the psychological literature on secondary victimization. Rebecca Campbell noted that "system-induced trauma" - negative institutional responses characterized by disbelief, blame and failure to assist - increases the chances of a person experiencing trauma, including post-traumatic stress disorder (PTSD). These victims also feel responsible for what was done to them and are less likely to complete a medical examination or seek prosecution. Campbell's idea of the "second rape" describes the ways in which institutions can perform the replication of the initial trauma of the initial rape.³⁴

The most frequently reported psychological effect of primary and secondary victimization in rape and severe assault cases is post-traumatic stress disorder. Diagnostic criteria are the intrusive re-experience (flashbacks, nightmares), avoidance of stimuli reminding of the trauma, mood and cognitive changes and increased arousal. An almost systematic exposure to PTSD-inducing stimuli is provided by the adversarial legal process: repeated recounting of the assault, seeing the accused in court, in-depth interrogation on the assault, and the naturally combative nature of cross-examination.

Secondary victimization also increases substance use disorders, social disengagement, major depressive disorder, as well as generalized anxiety disorder. Disbelieves or blames from protective authorities to create the trauma of betrayal which destroys trust in institutions and relationships. Combined with social secondary victimization, this trauma can be permanently incapacitating, particularly when victims are faced with social isolation after exposure.

1.5.2. Effect of Secondary Victimization on Reporting Rates

The strong deterrent effect secondary victimization has on crime reporting is one of its most practically

significant effects. High levels of case attrition—the difference between occurrences that happen and those that are reported, investigated, prosecuted, and result in conviction—are regularly shown in data from the National Crime Records Bureau about sexual offenses. The process connecting secondary victimization to underreporting is well-established in the research literature, despite the fact that this data does not explicitly quantify secondary victimization. Victims who have personally encountered unfavourable institutional reactions avoid interacting with those organizations again. Victims are discouraged from disclosing their own experiences when they see other victims being treated contemptuously, publicly humiliated, or the target of character assassination in court. Victims' formal legal rights are structurally discouraged by the community's awareness that disclosing sexual assault results in secondary victimization.

1.5.3. The 'Second Rape' Metaphor in Academic Literature

The "second rape" metaphor, coined by Lee Madigan and Nancy Gamble in 1991 and developed by others, explains how criminal justice interactions can recreate the trauma, helplessness and violation of the original trauma. The metaphor is purposefully controversial because it asserts that the pain caused by institutional secondary victimization is trauma of a similar order to the initial crime rather than just being upsetting or inconvenient. It does not believe that institutions should do harm and questions the presumption that institutional engagement is corrective and helpful.³⁵

The metaphor strikes a good note in India. It is reasonable to characterize a woman's experience with the criminal justice system as a second, state-administered violation if she reports rape and is subjected to hours of invasive police questioning, an intimate physical examination by an insensitive doctor, being forced to recount her story before a magistrate, the Sessions Court, and possibly the High Court on appeal, being cross-examined about her sexual history, her attire, and her relationship with the accused, and ultimately seeing the accused acquitted.

³⁴ Rebecca Campbell (n 41).

³⁵ Lee Madigan and Nancy Gamble, *The Second Rape* (Lexington Books 1991).

It highlights a systematic institutional failure that needs to be corrected immediately.

1.6. INTERNATIONAL RECOGNITION AND STANDARDS

1.6.1. UN Declaration of Basic Principles of Justice for Victims (1985)

The fundamental international document on victims' rights is the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, which was approved by the General Assembly in Resolution 40/34 of November 29, 1985.³⁶ The Declaration describes victims very broadly as any person who is affected by acts or omissions that are in violation of national criminal laws. This means harm to the body or mind, emotional anguish, financial loss or a serious impairment of basic rights. Importantly, it acknowledges that the consequences of crime go beyond the first victim by extending this concept to dependents and family members of direct victims.

In case total restitution is not possible, the Declaration recognises four basic categories of response to which victims are entitled: access to justice and just treatment of victims; restitution by the offender; compensation by the State; access to necessary material, medical, psychological and social assistance. The Declaration also stipulates that victims must be treated with compassion and respect for their dignity, informed of their rights and available services, given an opportunity to express their concerns at the appropriate times and protected from intimidation and retaliation. As the following chapters show, each of these demands directly relates to a type of secondary victimization that persists in a systematic manner throughout the Indian criminal justice system.

1.6.2. Conventions and Directives of the Council of Europe

The most extensive regional legislative framework for victim protection has been created by the Council of Europe through a number of measures. The idea of state compensation for victims of violent crimes was

founded by the European Convention on the Compensation of Victims of Violent Crimes (1983). Minimum requirements for the treatment of victims in all EU member states were established by the Framework Decision of 2001 on the status of victims in criminal proceedings. These standards include the rights to information, protection, compensation and a hearing. The EU Victims' Rights Directive of 2012 superseded and reinforced the former Framework Decision by setting out a comprehensive set of rights of victims in criminal proceedings: individual assessment of protection needs, special protective measures during the investigation and trial of the case, and the right not to contact the offender, among others.

Signatory States to the Council of Europe's Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011)³⁷ have extensive obligations to change their institutional and legal responses to violence against women. The Convention went into effect in 2014. In order to specifically address secondary victimization, it mandated that states take the appropriate legislative and other actions to prevent secondary victimization, avoid re-traumatizing victims through the legal system, offer specialized support services for victims of sexual violence, and train all professionals who interact with victims of violence against women. The Istanbul Convention provides a normative standard against which the Indian law and practice can be measured even though India is not a signatory.

1.6.3. Comparative Models: USA, UK, and Australia

The United States has created one of the world's most comprehensive victim protection laws. First passed in 1994³⁸, and updated in 2000, 2005, 2013 and 2022, the Violence Against Women Act (VAWA) provided for federal funding to victim assistance programs, rape crisis centres, and domestic violence shelters. It also established new federal crimes for interstate domestic violence and established a comprehensive framework for civil legal assistance of victims. The Crime Victims' Rights Act of 2004 established enforceable rights for victims in federal proceedings, including

³⁶ UN General Assembly (n 29).

³⁷ Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (2011).

³⁸ Violence Against Women Act 1994 (US).

reasonable protection, fair hearing, expeditious proceedings and treatment with privacy and dignity, among others. One of the most harmful types of legal secondary victimization is directly addressed by rape shield laws, which have been passed in all 50 states and limit the use of a complainant's sexual history as evidence.

A complex system of "special measures" for frightened and vulnerable witnesses, including victims of sexual offenses, was established under the UK's Youth Justice and Criminal Evidence Act 1999.³⁹ These precautions include the use of screens to protect witnesses from the accused, live link technology to permit testimony from outside the courtroom, evidence presented in private, court employees taking off their wigs and gowns, video-recorded evidence in chief, and intermediaries to help witnesses who struggle with communication. Given that a one-size-fits-all approach is inadequate, the availability of measures in the UK is determined by an individualised assessment of the witness's needs. Operating in England and Wales, the Independent Sexual Violence Advisers (ISVA) service provides non-legal advocates who are available to support victims throughout the process of reporting the offence to the end of any trial.

The focus on legislative reform of the evidence rules governing sexual assault complaints has been a prominent aspect of Australia's reactions to secondary victimization. Every Australian jurisdiction has passed rape shield legislation that limit the use of evidence related to a complainant's sexual history, and some have gone so far as to prohibit the inclusion of the complainant's previous correspondence, social media activity, and therapy records. To stop abusive interrogation, New South Wales and Victoria have passed laws mandating pre-trial judicial evaluation of suggested cross-examination questions. In order to address the dispersion of support that exacerbates secondary victimization in the Indian setting, Australian state and territory governments have also made significant investments in Sexual Assault Service facilities that offer integrated medical, forensic, counseling, and legal advocacy services.

³⁹ Youth Justice and Criminal Evidence Act 1999 (UK).

1.7. INDIAN CONCEPTUAL UNDERSTANDING OF SECONDARY VICTIMIZATION

1.7.1. Cultural, Patriarchal and Caste Dimensions

It is necessary to interact with the particular social, cultural, and structural factors that influence crime victims' experiences as well as the institutional reactions they face in order to comprehend secondary victimization in the Indian context. The overlapping of patriarchy, caste system, religious diversity and regional variations determine the social environment of India, which in turn has a bearing on the nature and extent of the secondary victimization.

Secondary victimization in cases of sexual violence is based on patriarchy, which is defined as a system of social structures and practices that allow men to dominate, oppress, and exploit women. Indian patriarchy is dynamic and has different manifestations in terms of region, caste, class and religion. However, some aspects are sufficiently widespread to form structuring conditions for the entire criminal justice system's response to sexual crime: the idea that female sexuality is a type of family property that needs to be controlled and protected; the idea that female sexual purity equates with family honour; the suspicion of women who move freely in public; and the expectation that women who are sexually assaulted should take the lead in preventing and reporting such assaults in ways that safeguard the reputation of their families and communities rather than the rights of the victim.

In India, caste gives secondary victimization an extra, especially serious dimension. One of the most severe examples of intersecting kinds of oppression in India is caste-based violence, especially sexual violence against Dalit women by males from dominant castes. When Dalit women report cases of violence, they are subjected to secondary victimization on multiple layers: police officers belonging to dominant castes may be institutionally biased towards, and personally insensitive towards, accused members of the dominant caste; the power structures in local communities may easily pressure women to drop their complaints; and larger community mechanisms may retaliate against the victim's family for disrupting the caste hierarchies. Although there is ample evidence of its uneven

application, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989⁴⁰ was specifically created to address this aspect of secondary victimization.

1.7.2. How Indian Society is Uniquely in the Amplification of Secondary Victimization

Secondary victimization is more prevalent in India than in other countries with similar legal systems due to a number of social and institutional characteristics. First, even well-meaning institutional actors frequently lack the time, training, and resources to respond to victims appropriately due to the criminal justice system's chronic under sourcing, which includes low police-to-population ratios, high judicial pendency, overburdened public prosecution services, and the almost complete lack of victim support services in the majority of police stations and courts. Thus, structural deficiency creates a particularly hostile institutional environment by exacerbating attitudinal bias.

Second, vulnerable victims were not taken into consideration when the adversarial legal system was imported from the colonial British model. It is based on the idea that all parties in criminal proceedings are regarded as equal before the court and are legally represented and able to express their views. When it comes to victims of sexual and violent crimes in India, who are often unrepresented, legally illiterate, psychologically traumatized, economically marginalized, and physically intimidated, these presumptions are usually untrue. Secondary victimization is caused by the structural discrepancy between the victim's reality and the system's presumptions.

Third, sensationalist reporting of violent and sexual crimes is strongly encouraged by India's media landscape, which is marked by fierce competition among several print and television news outlets. Media-driven secondary victimization exacerbates institutional and societal injury by disclosing the details of assaults, crafting stories about victims' personalities, and divulging or alluding to victims' identities. Although Section 228A of the Indian Penal Code⁴¹ (now part of the Bharatiya Nyaya Sanhita)

prohibits disclosure of the identity of rape victims, creative ways around this are common.

1.7.3. Honour Culture, Shame, and Silence

In Indian way of life (social life) the concept of honour (izzat) plays a central role in most of the regions, castes, and religion communities. Honour is based largely around women's sexual purity and is primarily seen as a social property that belongs to the family and community rather than as an individual attribute. A woman who has been sexually assaulted is frequently seen as "dishonoured" and this dishonour is thought to taint not only the victim, but also her own family and community. Secondary victimization finds fertile ground in this circle of honour, shame and secrets. This cultural logic has the practical effect of making victims of sexual violence feel ashamed, both because of the shame imposed by others and because the victim internalizes the guilt as a result of internalizing dominant cultural standards about female responsibility and purity.

Silence is the result of shame. Those who have already disclosed are under pressure to stop; those who continue to report in spite of societal pressure face further punishment in the form of social exclusion; and victims who fear that disclosure will embarrass themselves and their family decide not to report. Secondary victimization finds fertile ground in this circle of honour, shame and secrets. It guarantees that victims who come to the criminal justice system are already socially alienated and psychologically damaged, and it guarantees that any additional harm caused by the system's institutional actors won't be met with a social counterforce that may oppose or moderate it.

According to the researcher, an effective reaction to secondary victimization in India must thus function concurrently at the institutional, legal, and cultural levels. Even with legal reform and institutional capacity building, a wider cultural change is required in relation to perceptions of female sexuality, a trust in victims and moral obligations of the survivors. The institutional and legal aspects of this multi-level dilemma are thoroughly examined in the next chapters, while keeping in mind that these aspects are constantly

⁴⁰ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

⁴¹ Indian Penal Code 1860, s 228A.

influenced by and imbedded in the cultural environment discussed in this section.

1.8. CONCLUSION

The conceptual and theoretical framework for the ensuing institutional and legal study of this dissertation has been built in this chapter. The chapter has traced the origin of secondary victimization, differentiated it from primary and tertiary victimization, and explored important theoretical frameworks - Rape Trauma Syndrome, the Just World Hypothesis, re-trauma theory, social support theory and feminist legal theory - that are relevant for explaining why and how it occurs. It starts with the historical development of victimology as a body of knowledge and the move from an offender-centered to a victim-centered approach in criminology. It has put out a typology of secondary victimization, including institutional, social, legal, and medical, which serves as the theoretical foundation for Chapter Three's institutional analysis. In deciding the benchmarks against which we assess the law and practices in India, it focuses on the international normative context, from the UN Declaration and Council of Europe instruments of 1985 to comparative models in the United States, United Kingdom and Australia. Additionally, it has placed the issue of secondary victimization within the unique institutional, caste-based, patriarchal, and cultural context of modern India.

Three major conclusions from the theoretical synthesis in this chapter will direct the analysis in the subsequent chapters. First, secondary victimization is part of the structure of Indian criminal justice system's response to victims of violent and sexual crime, rather than marginal or rare. Second, it is caused not just by human prejudice and wrongdoing but also by institutional surroundings' architecture, legal procedures' design, and the cultural presumptions ingrained in institutional practice. Third, its solution requires simultaneous changes, at legal, institutional, cultural and attitudinal levels. These changes need to be informed not only by the evidential requirements of the system but also by an awareness of the psychological needs and rights of victims. After establishing this theoretical framework.